

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1414

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

-against-

ERNEST MALIZIA.

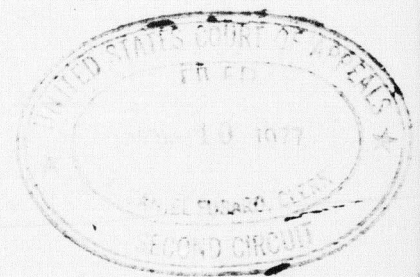
Appellant.

B
P/S

*On Appeal from the United States District Court
for the Southern District of New York*

Appellant's Appendix

J. JEFFREY WEISENFELD
Attorney for Appellant
401 Broadway
New York, New York 10013
(212) 925-8640



PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	<u>Page</u>
Docket Sheets	A-1
Indictment	A-16
Motion papers and Brief filed with District Court by Malizia on April 19, 1977	A-26
Transcript of proceedings dated April 19, 1977, p 1-6	A-31
Judgement of Commitment	A-37
Memorandum denying Rule 33 motion	A-38
Notice of Appeal	A-47

JUDGE COOPER

75 CRIM. 687

TITLE OF CASE		ATTORNEYS																																				
THE UNITED STATES		For U. S.:																																				
		Dominic P. Amorosa, AUSA 791-1960																																				
		205																																				
		For Defendant: Stokamer & Epstein 100 Church Street, NYC 10007 962 1564 (Richard Bolella)																																				
75-1 JOSEPH MAGNANO, a/k/a "Joe the Grind", 1-4 75-2 FRANK PALLATTA, a/k/a "Bolot", and a/k/a "Nose", 1-4 75-3 RICHARD BOLELLA, 1-4 cl. 12-3-75 75-4 LOUIS MACCHIAROLA, a/k/a "Red Hot", 1-4 75-5 MICHAEL CARBONE, 1-4 75-6 DOMINIC TUFARO, a/k/a "Donnie Boy", 1-4 75-7 FRANK FERRARO, a/k/a "Skooch", 1-4 75-8 CARMINE MARGIASSO, a/k/a "Charlie", 1-4 75-9 ANTHONY DELUTRO, a/k/a "Tony West", 1-4 75-10 ANTHONY SOLDANO, a/k/a "Tony", 1-4 75-11 JOSEPH MALIZIA, a/k/a "Patsy Pontiac", 1-4 75-12 ERNEST MALIZIA, 1 75-13 FRANK CARAVELLA, 13 75-14 JOHN GWYNN, 1, 10, 14, 15, 16 75-15 WILLIAM CHAPMAN, a/k/a "Chappy", 1 (107) 75-16 ST. JULIAN HARRISON, 1-5 75-17 FRANK LUCAS, 1, 5-7, 1-27-76 75-18 GERARD CACHOLAN, a/k/a "Coco", 1-4, 11 75-19 ROBERTO RIVERA, and 1-12-1-21-76 75-20 GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova", 1-17																																						
Count 1. 21 JS 3 - 1, 2, 3 (Ct. 1-2-76) Count 2. 846, 841, 812, (a) (1) (b) Consp. to viol. Fed. Narco. Laws (Ct. 1) Distr. & possess. w/intent to distr. Heroin, I. & Cocaine, II. (Cts. 2-17) (Seventeen Counts)		SH RECEIVED AND DISBURSED <table border="1"> <thead> <tr> <th>NAME</th> <th>RECEIVED</th> <th>DISBURSED</th> </tr> </thead> <tbody> <tr> <td>12/10/75 62529</td> <td>5-</td> <td></td> </tr> <tr> <td>12/11/75 Trans</td> <td>5-</td> <td></td> </tr> <tr> <td>12/12/75 62611</td> <td>5-</td> <td></td> </tr> <tr> <td>12/16/75 Trans</td> <td>5-</td> <td></td> </tr> <tr> <td>9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19</td> <td></td> <td></td> </tr> <tr> <td>12/15/75 62734</td> <td>5-</td> <td></td> </tr> <tr> <td>12/16/75 Trans</td> <td>5-</td> <td></td> </tr> <tr> <td>12/16/75 62843</td> <td>5-</td> <td></td> </tr> <tr> <td>12/18/76 Trans</td> <td>5-</td> <td></td> </tr> <tr> <td>2/4/76 65217</td> <td>5-</td> <td></td> </tr> <tr> <td>2/5/76 Trans</td> <td>5-</td> <td></td> </tr> </tbody> </table>	NAME	RECEIVED	DISBURSED	12/10/75 62529	5-		12/11/75 Trans	5-		12/12/75 62611	5-		12/16/75 Trans	5-		9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19			12/15/75 62734	5-		12/16/75 Trans	5-		12/16/75 62843	5-		12/18/76 Trans	5-		2/4/76 65217	5-		2/5/76 Trans	5-	
NAME	RECEIVED	DISBURSED																																				
12/10/75 62529	5-																																					
12/11/75 Trans	5-																																					
12/12/75 62611	5-																																					
12/16/75 Trans	5-																																					
9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19																																						
12/15/75 62734	5-																																					
12/16/75 Trans	5-																																					
12/16/75 62843	5-																																					
12/18/76 Trans	5-																																					
2/4/76 65217	5-																																					
2/5/76 Trans	5-																																					
DATE	PROCEEDINGS																																					
7-10-75	Filed indictment.																																					
7-13-75	Deft. Mangano (atty present Edward Panzer) enters plea of not guilty. Bail continued. Deft. Pallatta (atty present Jay Goldberg) enters plea of not guilty. Bail continued. Deft. Bolella (atty present, Gilbert Epstein) enters plea of not guilty. Bail continued. Deft. Delutro (atty present) Enters plea of not guilty. Bail continued. Deft. Soldano (atty present) Robert Blaszner Enters plea of not guilty. Bail continued. Deft. Gwynn (atty present Edward D. Loughman) enters plea of not guilty. Bail continued. Deft. Chapman (atty present, Reed) Enters plea of not guilty. Bail continued. Deft. Cacholani (atty not present) Court enters plea of not guilty. Bail continued. Deft. Rivera Produced on Writ (atty not present) Court enters not guilty plea.																																					

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEPENDANT
	Deft. Rodriguez Bench warrant ordered Issued Trial scheduled Sept 22, 1975 at 1:00 P.M. Cooper, J.		
7-15-75	FRANK LUCAS-Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, Trenton State Prison, Trenton, N.J. Writ issued, ret. 7-28-75.		
7-24-75	Filed Govt's. affidavit & notice of motion for an order sequestering jurors during the trial of this matter.		
7-28-75	Deft. Lucas (atty present) Jeffrey C. Hoffman. Pleads not guilty. Case referred to Judge Cooper. Writ satisfied.....Conner, J.		
7-30-75	ANTHONY DeLUTRO-Filed Second Offender Information.		
7-30-75	WILLIAM CHAPMAN-Filed Second Offender Information.		
7-30-75	ROBERTO RIVERA-Filed Second Offender Information.		
7-30-75	ROBERTO RIVERA-Filed Second Offender Information.		
7-30-75	FRANK LUCAS-Filed Second Offender Information.		
7-31-75	Filed MEMO ENDORSED on Govt's. motion filed 7-24-75. Application for sequestration is denied without prejudice to renewal.....Cooper, J. (mailed notice)		
7-25-75	ROBERTO RIVERA-Filed ORDER that the U.S. Marshal for the S.D.N.Y. maintain custody of the deft. in the Southern District pending the completion of the trial of this indictment.....Cooper, J.		
8-1-75	GERARD CACHOLAN-Filed Second Offender Information.		
8-1-75	FRANK LUCAS-Filed OPINION #42858 - Deft's. motion for suppression of evidence is denied.....Cooper, J. (mailed notice)		
8-13-75	FRANK LUCAS-Filed writ of habeas corpus directed to Warden, Trenton State Prison, with marshal's return. Writ satisfied 7-28-75.....Conner, J.		

JUDGE COOPER

2. The Case, Civil Docket Continuation

Page #3

DATE	PROCEEDINGS	With Order or Judgment Not
8-19-75	ANTHONY SOLDANO-Filed deft's. affidavit & notice of motion for a bill of particulars, discovery & inspection, disclosure & for suppression of evidence, ret. 8-29-75.	
8-25-75	ANTHONY SOLDANO-Filed Govt's. affidavit in opposition to deft's. motion for a bill of particulars & discovery.	
8-21-75	Filed OPINION #42987-Defts'. motions for discovery and for a bill of particulars are granted in part & denied in part. The motions of defts. Magnano and Palatta to strike aliases are denied. Defts'. Magnano, DeLutro & Palatta's motions for severance are denied. Defts'. Lucas, Boiella & Palatta motion for disclosure of agent or informer is denied. Deft. Soldano's. motion to dismiss the indictment is denied.....Cooper, J. (mailed notice)	
9-3-75	FRANK LUCAS-Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, Trenton State Prison. Writ issued, ret. 9-19-75.	
9-3-75	ANTHONY SOLDANO-Filed MEMO ENDORSED on deft's. motion for a bill of particulars, discovery & suppression. Motion granted in part & denied in part.... Cooper, J. (mailed notice)	
9-10-75	Filed Govt's. affidavit for a writ of habeas corpus ad test. for John Vasquez directed to Superintendent, N.Y.S. Dept. of Corrections. Writ Issued, ret. forthwith.	
9-16-75	ANTHONY DeLUTRO-Filed deft's. memorandum of law. (Filed in 75 Cr. 24),	
9-16-75	ANTHONY DeLUTRO-Filed deft's. requests to charge. (Filed in 75 Cr. 24).	
9-18-75	RICHARD BOIELLA-Filed deft's. affirmation & notice of motion for discovery and for a continuance, ret. 9-22-75.	
9-24-75	WILLIAM CHAPMAN-Filed CJA Form 23 - deft's. financial affidavit.	
9-24-75	WILLIAM CHAPMAN-Filed ORDER appointing William Chance, 70 Lafayette St., N.Y.C. 10013 as attorney for deft. in this matter only.....Cooper, J.	
9-30-75	RICHARD BOIELLA-Filed Govt's. affidavit in opposition to deft's. motion for discovery and for a continuance.	
9-1-75	ANTHONY DeLUTRO-Filed ORDER granting custody to the Govt. of sealed Court authorized intercepted wire communications not to be unsealed in the absence of further order of this Court.....Cooper, J.	
10-2-75	RICHARD BOIELLA-Filed MEMO ENDORSED on deft's. motion for discovery filed 9-18-75. The within application has been rendered in its entirety by the Govt's. disclosure in open court on 9-29-75.....Cooper, J.	
10-3-75	Filed Govt's. affidavit & ORDER that John Vasquez be lodged at the Bergen County Jail and transported to and from U.S. Attorney's Office, S.D.N.Y. during the period from 10-3-75 to 10-30-75.....Duffy, J.	
10-3-75	Filed Govt's. affidavit & ORDER that Anthony Manfredonia be lodged at the Bergen County Jail and transported to and from U.S. Attorney's Office, S.D.N.Y. during the period from 10-2-75 to 10-30-75.....Duffy, J.	

A-3

Page #4

DATE	PROCEEDINGS	Date Order or Judgment Noted
9-22-75	Deft. Gerard Cachoian withdraws his plea of not guilty & pleads guilty to count 11 only. Govt. consents to dismiss count 1. Pre-sentence report ordered. Probation notified. Sentence - Date Open. Present bail condition continued.Cooper,J.	
9-22-75	Jury trial begun as to the following defts. Joseph Magnano, Frank Pallatta, Richard Bolella, Anthony DeLutro, Anthony Soldano, John Gwynn, William Chapman, Roberto Rivera & Frank Lucas before Cooper,J. (Oath to jurors, voice dire).	
9-24-75	Trial continued. Jury duly empaneled & sworn.	
9-25-75	Trial continued. Deft. Roberto Rivera withdraws his plea of not guilty (during trial) & pleads guilty to count 1 only. (Count 12 open). Pre-sentence report ordered. Probation notified. (Sentence date open). Deft. remanded in custody of U.S. Marshals.....Cooper,J.	
9-26-75	Trial continued.	
9-29-75	Trial continued.	
9-30-75	Trial continued. Deft. Lucas bail exonerated & deft. remanded.	
10-1-75	Trial continued.	
10-2-75	Trial continued.	
10-3-75	Trial continued.	
10-6-75	Trial continued. Deft. William Chapman moves to exonerate bail. Motion Granted. no opposition by the Govt.	
10-7-75	ROBERTO RIVERA-Filed deft's. petition to enter plea of guilty with Order - guilty plea accepted.....Cooper,J.	
10-7-75	Trial continued.	
10-8-75	Trial continued.	
10-9-75	Trial continued.	
10-10-75	Trial continued.	
10-14-75	Trial continued.	
10-15-75	Trial continued. Govt. rests.	
10-16-75	Trial continued.	
10-17-75	Trial continued.	
10-20-75	Trial continued.	
10-21-75	Trial continued. All defts. rest.	
10-22-75	Trial continued.	
10-23-75	Trial continued.	
10-24-75	Trial continued & concluded. (Special verdict as to all deft's. attached.) Jury Verdict - Deft. Joseph Magnano guilty on counts 1,2,3 & 4. (jury polled) Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Frank Pallatta guilty on counts 1,2,3 & 4 (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Bolella guilty on counts 1 & 4 and jury disagreement on counts 2 & 3. (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Anthony DeLutro guilty on counts 1 & 8 (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Anthony Soldano guilty on counts 1 & 9 (jury polled) Pre-sentence report ordered. Probation notified. Deft. Remanded. Sentence 12-3-75 at 10:00 A.M.....Cooper,J.	

Cont'd. on Page #5

A-4

JUDGE COOPER

DATE	PROCEEDINGS	Date Ordered Judgment
10-24-75	Jury Verdict - Deft. John Gwynn guilty on counts 1, 10 & 16. Jury disagreement on counts 14 & 15. Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. remanded.Cooper, J. Deft. William Chapman jury disagreement on count 1 (R.O.R.)Cooper, J. Deft. Frank Lucas guilty on counts 1, 5, 6 & 7 (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded,.....Cooper, J.	
11-12-75	JOSEPH MAGNANO, et al., - Filed Order that Mr. John Bright & Ms. Sonja Johnson be allowed entrance into the Metropolitan Correctional Center during visiting hours from 12:00 noon to 3:30 p.m. & 4:30 p.m. to 6:30 p.m. for the purpose of consulting with the defts. Joseph Magnano, Frank Palatta & Richard Bolella. Cooper J. (Consented by U.S. Atty.) (mailed notice)	
11-20-75	Filed transcript of record of proceedings dated 9-22-75.	
11-25-75	RICHARD BOLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed defts'. affidavit & notice of motion for an evidentiary hearing to determine if a new trial should be granted and for a judgment of acquittal on counts 2 & 3 as to deft. Bolella, ret. 12-3-75.	
11-26-75	ANTHONY DeLUTRO-Filed deft's. affidavit & notice of motion for a new trial and for a judgment of acquittal, ret. 12-3-75.	
12-3-75	JOHN GWYNN-Filed deft's. motion for a judgment of acquittal or alternatively for a new trial.	
12-3-75	JOHN GWYNN-Filed MEMO ENDORSED on deft's. motion filed 12-3-75. Motion denied in all respects.....Cooper, J. (mailed notice)	
12-3-75	Filed Govt's. affidavit in opposition to defts'. post trial motions for a new trial.	
12-3-75	ANTHONY DeLUTRO-Filed MEMO ENDORSED on deft's. motion for a new trial and for a judgment of acquittal, filed 11-26-75. Motion denied in all respects...Cooper, J. (mailed notice)	
12-3-75	RICHARD BOLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed MEMO ENDORSED on defts'. motion for an evidentiary hearing & for a judgment of acquittal, filed 11-25-75. Motion denied in all respects.....Cooper, J. (mailed notice)	
12-5-75	RICHARD BOLELLA-Filed true copy of U.S.C.A. Mandate - Deft's. motion dated 10-28-75 for bail pending sentencing is denied. (mailed notice)	
12-9-75	ROBERTO RIVERA-Filed Govt's. sentencing memorandum.	
12-3-75	RICHARD BOLELLA-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TEN (10) YEARS on each of counts 1 and 4 to run CONSECUTIVELY to each other. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS pursuant to Title 21, U.S. Code, Section 841 to commence upon expiration of confinement.....Cooper, J. Issued commitment 12-9-75.	

A-5

Page #6

DATE	PROCEEDINGS	Date Order Judgment
12-3-75	ANTHONY SOLDANO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on each of Counts 1 and 2 to run concurrently with each other. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement.....Cooper, J. Issued commitment 12-9-75.	
12-3-75	JOSEPH MAGNANO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on Count 1. FIFTEEN (15) YEARS on Count 2 to run CONSECUTIVELY to sentence imposed on Count 1. FIFTEEN (15) YEARS on Count 3 to run concurrently with sentence on Counts 1 and 2. FIFTEEN (15) YEARS on Count 4 to run concurrently with sentence on Counts 1 and 2. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS to commence upon expiration of confinement, pursuant to (Title 21 Section 841, U.S. Code.)...Cooper, J. Issued commitment 12-10-75.	
12-3-75	FRANK PALLATTA-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on Count 1. FIFTEEN (15) YEARS on Count 2 to run CONSECUTIVELY to sentence imposed on Count 1. FIFTEEN (15) YEARS on Count 3 to run concurrently with sentence on Counts 1 and 2. FIFTEEN (15) YEARS on Count 4 to run concurrently with sentence on Counts 1 and 2. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS to commence upon expiration of confinement, pursuant to (Title 21 Section 841, U.S. Code)....Cooper, J. Issued commitment 12-10-75	
12-3-75	JOHN GWYNN-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of EIGHT (8) YEARS on each of counts 1, 10 and 16 to run concurrently with each other. Deft. placed on SPECIAL PAROLE for a period of THREE (3) YEARS, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement. The sentence imposed herein is to run concurrently with the state probation violation.....Cooper, J. Issued commitment 12-10-75.	
12-3-75	ANTHONY DeLUTRO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY-FIVE (25) YEARS on each of Counts 1 and 8 to run concurrently with each other. The deft. is placed on SPECIAL PAROLE for a period of SIX (6) YEARS, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement.....Cooper, J. Issued commitment 12-10-75.	
12-10-75	ANTHONY DeLUTRO-Filed deft's. affidavit & notice of motion for reduction of sentence.	
12-10-75	ANTHONY DeLUTRO-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. (Mailed copies to Anthony DeLutro, M.C.C., 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office).	
12-12-75	ANTHONY SOLDANO-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. Mailed copies to Anthony Soldano, 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.	

Cont'd. on Page #7

A-6

DATE	PROCEEDINGS	Date Order Judgment No.
12-12-75	RICHARD BOLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed Defts'. notice of appeal from the judgments of conviction entered on 12-3-75. Mailed copies to Defts. at 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.	
12-15-75	ANTHONY DeLUTRO-Filed Govt's. affidavit in opposition to deft's. motion for reduction of sentence.	
12-16-75	JOHN GWYNN-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. Copies mailed to John Gwynn, 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.	
12-19-75	ANTHONY SOLDANO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	RICHARD BOLELLA-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	JOHN GWYNN-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	ANTHONY DeLUTRO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	FRANK PALATTA-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	JOSEPH MAGNANO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-29-75	RICHARD BOLELLA-Filed Deft's. affidavit & notice of motion for bail pending appeal.	
12-29-75	JOSEPH MAGNANO & FRANK PALATTA-Filed Defts'. affidavit & notice of motion for bail pending appeal.	
1-7-76	JOSEPH MAGNANO, FRANK PALATTA, RICHARD BOLELLA & ANTHONY DeLUTRO-Filed ORDER that Defts'. motion for a new trial based on newly discovered evidence is denied.....Cooper, J. (mailed notice)	
01-12-76	Filed notice of certification & transmittal of the record on appeal to the U.S.C.A.	
01-13-76	Filed transcript of record of proceedings dated Oct. 14, 15, 16 & 17, 1975.	
01-13-76	Filed transcript of record of proceedings dated Oct. 20, 21, 22, 1975.	
01-13-76	Filed transcript of record of proceedings dated Sep. 22, 24, 25, 26, 29, 1975.	
01-13-76	Filed transcript of record of proceedings dated Sep. 30, Oct. 1, 2, 3, 6, 1975.	
01-13-76	Filed transcript of record of proceedings dated Oct. 7, 8, 9, 10, 1975.	
01-13-76	Filed transcript of record of proceedings dated Oct. 13, 14, 15, 1975.	
01-14-76	Filed notice of certification & transmittal of the first supplemental record on appeal to the U.S.C.A.	

A7

Page #8

DATE	PROCEEDINGS	Date Order Judgment No.
1-14-76	JOSEPH MAGNANO, FRANK PALATTA & RICHARD BOLELLA-Filed Govt's. affidavit in opposition to defts'. motion for bail pending appeal.	
1-14-76	JOSEPH MAGNANO, FRANK PALATTA & RICHARD BOLELLA-Filed OPINION #43727 - Defts'. motions for bail pending appeal are denied in all respects.....Cooper, J. (mailed notice)	
2-20-76	FRANK LUCAS-Filed Deft's. affidavit & notice of motion to recuse the Court from sentencing the deft.	
2-21-76	ROBERTO RIVERA-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of fifteen (15) years on Count 1, and to follow any and all other sentences heretofore imposed. Deft. placed on Special Parole for a period of Six (6) years, pursuant to Title 21, U.S. Code Section 841, to commence upon expiration of confinement. Count 12 is dismissed on motion of deft's. counsel with the consent of the Govt.....Cooper, J. Issued commitment 1-28-76.	
2-29-76	FRANK LUCAS-Filed MEMO ENDORSED on deft's. unsigned Order to Show Cause for stay of transfer. Oral argument held. Stay and motion denied in all respects.....Cooper, J. (mailed notice).	
2-27-76	FRANK LUCAS-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY (20) YEARS on each of counts 1 and 5 to run concurrently with each other. TWENTY (20) YEARS on each of counts 6 and 7 to run concurrently with each other. TWENTY (20) YEARS on counts 6 and 7 to run consecutively to sentence imposed on counts 1 and 5 and not concurrently. (Total sentence FORTY (40) YEARS. FINED \$50,000 on each of counts 1, 5, 6 and 7. Fines totalling \$200,000.00 are to be paid or he is otherwise discharged according to law. This is a committed fine. (1) This sentence to be in addition to, and exclusive of, any sentence now being served or to be imposed in the future. Deft. placed on special parole for a period of SIX (6) YEARS, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement.....Cooper, J. Issued commitment 1-30-76.	
2-02-76	Filed transcript of record of proceedings dated 12-3-75.	
2-13-76	FRANK LUCAS-Filed Govt's. affidavit in opposition to deft's. motion to recuse the Court from sentencing deft.	
2-10-76	FRANK LUCAS-Filed MEMO ENDORSED on deft's. motion to recuse the Court. Motion denied in toto.....Cooper, J. (mailed notice)	
2-12-76	Filed notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A.	
2-11-76	FRANK LUCAS-Filed deft's. notice of appeal from the final judgment of conviction entered on 1-27-76. Mailed notice to Frank Lucas, Esq., 1007 East 10th St., N.Y.C. 10007 and U.S. Attorney's Office.	

Cont'd. on Page #9

A-8

DATE	PROCEEDINGS
02-05-76	ROBERTO RIVERA-Filed commitment & entered return. Forwarded to Warden, N.J.C. Dept. to be returned to U.S.P.
02-09-76	Filed notice of certification & transmittal of the 3rd supplemental record on appeal to the U.S.C.A.
02-17-76	FRANK LUCAS-Filed true copy of J & C with marshal's return. Forwarded a copy to the U.S. Marshal for the District of N.J. to be lodged as a detainer against the deft. at Trenton State Prison, Trenton, N.J.
02-17-76	FRANK LUCAS-Filed writ of habeas corpus with marshal's return -Writ satisfied upon application of AUSA Dominick Amorosa.....Cooper, J.
02-19-76	ANTHONY DeLUTRO-Filed MEMO END on Dft's motion for reduction of sentence. Motion denied.....Cooper, J. (mailed notice)
02-23-76	ROBERTO RIVERA-Filed CJA Form 20 Copy 3 appointing Victor J. Herwitz as attorney for deft., dated 9-22-75.....Cooper, J.
02-23-76	ROBERTO RIVERA-Filed CJA Form 20 Copy 2 approving payment to Victor J. Herwitz, dated 2-18-76.....Cooper, J.
3-4-76	JOHN GNYNI. - Filed Memo. End. on dfts. letter which attached to U.S. Atty. Dominic P. Amorosa to Judge Cooper dtd. 2-18-76. Re: Has no opposition to dfts. application for appeal in forma pauperis. Application Granted. So Ordered.....Cooper J. (ProSe Mailed Notice)
03-76	FRANK LUCAS - Filed Notice of Certification of Supplemental Record to the USCA.
3-9-76	RICHARD BOLELLA - Filed Dfts. affidavit and notice of motion for an order dismissing Cts. 2 & 3 of the indictment pur to Rule 7
3-5-76	Filed transcript JAN 27 16
03-24-76	FRANK LUCAS, et al- Filed Notice of the 4th Supplemental Record Certification to the USCA.
03-30-76	RICHARD BOLELLA - Filed Memo. End. on motion dtd. 3-9-76. Motion granted...Cooper J. (mailed notice)
04-30-76	JOHN GNYNI - Filed True Copy of USCA Mandate. Dft.s appeal from the judgment is dismissed....(mailed notice)
7-21-76	ROBERTO RIVERA - Filed Dfts. Notice of Motion for Modification of Sentence.
10-6-76	All Dfts. - Filed True Copy of USCA Mandate & Copy of Opinion. Ordered Judgments of District Court are affirmed in accordance with opinion of the USCA. Judgment Entered 10-6-76 Clerk Ent. 10-7-76 (mn)
1-15-76	Filed Govts. Affidvt. in opposition to Dft. Anthony De Lutro for re-sentencing.
1-4-77	WILLIAM CHAPMAN - Filed CJA 20 Copy 2 approving payment to William C. Chance, Jr., as atty. for dft.....dtd. 11/8/76.....Cooper J.

(CONT'D)

DATE

PROCEEDINGS

Page #10

1-4-76 WILLIAM CHAPMAN - Filed CJA 26 Copy 5 - Appointing William C. Chance Jr., as atty. for dft. dtd. 11-8-76.....Cooper J.

2-10-76 Dft. Cachoian - Non appearances for sentencing (Atty. Present John Doyle) Bench Warrant Ordered Issued.....Cooper J. (Entered 1-14-77)

1-14-77 Bench Warrant Issued.

1-19-77 Dft. Gerard Cachoian (atty. Present John Doyle) Dft. produced on warrant. Dft. application to withdraw guilty plea - denied - Dft. Remanded. Sentence set for February 15, 1977 at 12:30 P.M.....Cooper J.

1-24-77 GERARD CACHOIAN - Filed the following papers rec'd from Mag. Jacobs. (Mag. #77-55)
Docket Entry Sheet
Warrant of Arrest - executed on 1-17-77
Disposition Sheet
CJA 20 Copy 5 Appointing John H. Doyle, % Anderson Russell, Fill & Ollick, 630 Fifth Avenue, NYC 10020.

1-28-77 ANTHONY DE LUTRO - Filed Memorandum Order. Dfts. motion for resentencing is denied in all respects.....Cooper J. (mn)

2-23-77 GERARD CACHOIAN - Filed Judgment & Commitment (Atty. John Doyle Present) The Dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of TWELVE (12) YEARS on Count 11. The Dft. is placed on special parole for a period of SIX (6) YEARS, pursuant to T:18 U.S.C. Sec. 841 to commence upon expiration of confinement. Count One is dismissed.....Cooper J. Issued Commitment 2-28-77.

3-1-77 ERNEST MALIZIA - Dft. Ernest Malizia Produced on B/W & arraigned. Court enters Not Guilty Plea. Court Grants One (1) Week SX to the Dft. for counsel March 6, 1977 @ 12:Noon Dft. Remanded No Bail.....Cooper J.

3/7/77 JOHN CHYNN - Filed True Copy of USCA Mandate. Judgment of District Court Affirmed Judgment Entered 3/7/77 Clerk. Entered 3/7/77. (mailed notice)

3/7/77 GERARD CACHOIAN - Filed True Copy of J&C with marshals ret. Dft. delivered to Warden, MCC, NY on 2/23/77.

3/7/77 GERARD CACHOIAN Filed Mag. Final Commitment.....Mag. Jacobs.

3/7/77 ERNEST MALIZIA Filed Warrant of Removal on Indictment from the Southern District of Florida, USDC Ret. executed 2/25/77.

3/15/77 ERNEST MALIZIA - Dft. (Atty. Present Joseph Stone) Hearing Held. Motions papers to be submitted by 3/30/77... Trial Date 3/30/77. @ 10:AM.....Cooper J.

3/15/77 Filed Affidavit and notice of motion of dft. Ernest Malizia, for an order precluding the U.S. Atty. from offering into evidence in the trial of the above indictment any items seized from the dft. Ernest Malizia, at the time of his arrest on Dec. 18, 1973. Ret. 3-30-77.

(CONT'D)

A-10

CIVIL DOCKET

USA vs. Joseph Maguano, et al.

DATE	FILINGS—PROCEEDINGS
	Page #11
3-24-77	JOSEPH MAGNANO & FRANK PALLATTA - Filed True Copy of Supreme Court of U.S. Mandate. Petition Denied. (mailed notice)
3-24-77	ANTHONY DE LUTRO- Filed True Copy of Supreme Court of U.S. Mandate. Petition denied. (mailed notice)
3-24-77	RICHARD BOLELLA - Filed True Copy of Supreme Court of U.S. Mandate. Petition Denied.(mailed notice)
3-24-77	FRANK LUCAS - Filed True Copy of Supreme Court of U.S. Mandate. Petition denied.(mailed notice)
3-24-77	ANTHONY SOLDANO - Filed True Copy of Supreme Court of U.S. Mandate. Petition denied..(mailed notice)
3-30-77	Dft. Ernest Malizia (Atty. Present Joseph Stone) Hearing held after oral argument trial date set for April 18, 1977 @ 1 PM.....Cooper J.
3-31-77	Filed Govts. Affdvt. for W/H/G Ad Testificandum. Writ Issued Ret. Forthwith.
4-5-77	ERNEST MALIZIA- Filed Order that the trial transcripts only, in 75 Cr. 687, 75 Cr. 502 & 74 Cr. 150 be removed by Joseph I. Stone, assigned counsel & the aforementioned record be returned to this court upon completion of the copying & not later than the termination of the trials of Ernest Maliza in indictment # 75 Cr. 687.....Cooper J. (mn)
4-5-77	Filed Memo. End. on motion dtd. 3-25-77. (ERNEST MALIZIA) Denied in all respects. Memorandum to follow.....Cooper J. (mn)
4-6-77	ERNEST MALIZIA - Filed Govts. Affdvt. in opposition & in response to dfts. Pre Trial Motions.
4-6-77	ERNEST MALIZIA - Filed Memorandum Order. Dfts. pretrial motions are denied except as indicated.Cooper J. (mn)
4-21-77	ERNEST MALIZIA - Filed Dfts. Affdvt. Re: Atty reviewed Transcripts, dft. request that each dft. convicted of this indictment be available as witness for his defense. Writs. Ret. 4/25/77.

(CONT'D)

A-11

9-77 Jury Trial begun before Cooper J. as to Dft. Ernest Malizia.
10-77 Trial Cont'd
11-77 " "
12-77 " "
1-77 " "
2-77 " "
3-77 " "
4-77 " "
5-77 ERNEST MALIZIA - Filed Order that the Special Narcotics Office of Prosecution
for the City of New York comply with this order forthwith.....Cooper J.
(ON)
6-77 ERNEST MALIZIA - Filed Writ of Habeas Corpus Ad Testificandum of
Gerard Cacheian on or before 4/23/77.
7-77 ERNEST MALIZIA - Filed W/H/C Ad Testificandum of Frank Lucena on or before
4-23-77.
8-77 Trial Cont'd & Concluded. Jury Verdict: Dft. Guilty as charged. Pre-
sentence report ordered. Probation Notified. Sentence May 31, 1977
@ 10:AM Counsel Application to relieved as dfts. Atty. motion reserved. W
Dft. Remanded.....Cooper J.
9-77 ERNEST MALIZIA - Filed Dfts. Writ of Habeas Corpus Ad Testificandum. of
Frank Palliatto. Writ Satisfied 4-27-77
10-77 ERNEST MALIZIA - Filed Dfts. W/H/C Ad Testificandum of Anthony Soldano. Writ Sat. 4-27-77
11-77 ERNEST MALIZIA - Filed W/H/C Ad Testificandum of Miguel Russo. Writ Satisfied 4-27-77
12-77 ERNEST MALIZIA - Filed W/H/C Ad Testificandum of Joseph Magnano. Writ Satisfied 4-27-77
1-77 ERNEST MALIZIA - Filed True Copy of USCA Mandate. Petition is denied, etc. (W)
2-77 ERNEST MALIZIA - Filed W/ H.C. Ad Testificandum of Anthony Delutro.
3-77 ERNEST MALIZIA - Filed W/H/C Ad Testificandum of John Gwynn. Writ
Satisfied 5/2/77.....Cooper bJ.
4-77 ERNEST MALIZIA - Filed W/H/C Ad Testificandum of Richard Bolella.
Writ Satisfied.....Cooper J.
5-77 Ernest Malizia - Filed transcript of record of proceedings, dated 4-28, 29, 1977 & 5/4/77
6-77 Ernest Malizia - Filed transcript of record of proceedings, dated 4/19, 24, 25, 26, 27-1977
7-26-77 Ernest Malizia - Filed Notice of Appearance of J. Jeffrey Weisenfeld, 401 Bway.
NYC 10013, 925-8814.

(CONT'D)

RECEIVED

DATE	FILED - PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
	Page #13	
5-9-77	ANTHONY DeLUTRO - Filed Dfts. Notice of Motion for order reducing sentence..	
5-11-77	FRANK LUCAS - Filed Dfts. Notice of Motion for an order reducing the sentence. Ret. 6-22-77.	
5-13-77	FRANK LUCAS - Filed Dfts. Memorandum of Law in support of Motion pur. to Rule 35.	
6-16-77	Filed Copy CJA 20 Copy 2 - approving payment to for debt Ernest Malizia Joseph I. Stone dtd. 6-3-77/...Cooper, J.	
6-17-77	Filed Notice of Motion for an order vacating and setting aside the judgment and granting the debt. Ernest Malizia a new trial. Returnable 6-27-77.	
6-17-77	Filed supporting affdvt. on motion. for debt. Ernest Malizia	
6-20-77	GERARD CACHOIAN - Filed Dft. Notice of Motion to reduce sentence pur. to Rule 35.	
6-19-77	ERNEST MALIZIA - Filed Judgment & Commitment (Atty. J. Jeffrey Weisenfeld Pres.) # 22809 The Dft. is hereby committed to the custody of the atty. gen. or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on Count 1, this sentence is to run connectively with the sentence of Judge Motley, Judge Werker & Judge Pollack and any other sentence imposed upon dft. anywhere prior to this date. The Dft. is Fined \$25,000.00 or stand committed. The dft. is placed on Special Parole for SIX (6) YEARS, pur. to T.21 U.S. Code Sec. 841, to commence upon expiration of confinement. Dft. advised of his right to appeal.Cooper J. Issued Commitment 6-21-77	
6-21-77	RICHARD BOLELLA - Filed Dfts. Notice of Motion for reduction of sent. pur. to Rule 35 FRCrP.	
6-21-77	ROBERTO RIVERA - Filed Memo. End. on motion dtd. 5-21-76. Motion denied in all respects.Cooper J. (mn)	
6-28-77	ERNEST MALIZIA - Filed True Copy of J&C with marshals ret. Dft. delivered to warden, MCCNY on 6-15-77.	

FILINGS—PROCEEDINGS

AMOUNT
REPORTED
EMOLUMENTS
RETURNED

7-5-77 Filed Opinion #46149 on Roberto Rivera, motion for reduction of sentence is denied.....Cooper, J. m/n

7-11-77 Filed transcript of record of proceedings, dated 3-8-77 *Ernest Malizia*

7-11-77 Filed transcript of record of proceedings, dated 3-15-77 " "

7-11-77 Filed transcript of record of proceedings, dated 3-30-77 " "

7-11-77 Filed transcript of record of proceedings, dated 5-6-77 " "

7-11-77 Filed transcript of record of proceedings, dated 5-25-77 " "

7-11-77 Filed transcript of record of proceedings, dated 3-1-77 " "

8-2-77 Filed Gov't affdvt. in opposition to deft. Frank Lucas' motion for an order reducing his sentence.

8-2-77 Filed Gov't affdvt. in opposition to deft. Anthony de Lutro's motion for an order reducing his sentence.

8-2-77 Filed Gov't affdvt. in opposition to motion of the deft. Richard Bolella for an order reducing his sentence.

8-4-77 Deft. Anthony Delutro's motion for reducing of sentence is denied...
.....Cooper, J. m/n

8-4-77 Deft. Richard Bolella's motion for reduction of sentence is denied
.....Cooper, J. m/n

8-23-77 Filed deft. Richard Bolella's Notice of motion to extend time for filing Notice of Appeal.

8-25-77 Filed deft. Anthony Soldano's Notice of Motion and supporting affdvt. for an order for modification of sentence.

8-26-77 Filed Gov't Affdvt. does not oppose deft's motion for extension of time within deft. Richard Bolella may file his notice of appeal.

8-30-77 Filed Gov't affdvt. in opposition to deft's Anthony Soldano motion for an order reducing his sentence.

8-31-77 *Ernest Malizia* Filed transcript of record of proceedings, dated 5-3-77

8-31-77 *Ernest Malizia* Filed transcript of record of proceedings, dated 6-15-77

9-2-77 Filed memo endorsed on deft. Richard Bolella's motion for extended time to file Notice of Appeal. Motion is granted, to extend time to appeal to 9-12-77.....Cooper, J. m/n

9-2-77 Filed MEMORANDUM- The deft's request for reduction of sentence must be denied in its entirety.....So Ordered Cooper, J. m/n *(Anthony Soldano)*

9-16-77 Filed Gov't affdvt. request deft. David Harding be released into the custody of Police Officer Edward Lewter or any other officer of the N.Y. City Police Dept. assigned to the office of the Special Narcotics Prosecutor, between the hours of 9:30 A.M. and 5:30 P.M. during the period from 9-16-77 through 10-14-77.

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S.W.

U.S.A. vs. MAGNANO, JOSEPH, et al.

75 687

Yr. Docket No. Del.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
	(Document No.)	(a)	(b)	(c)	(d)
9-15-77	Filed order that the Warden of MCC and the U.S. Marshal shall release David Harding, presently incarcerated at the MCC pursuant to writ of Habeas Corpus ad Testificandum to the custody of Police Officer Edward Lewter or any other officer of the N.Y. City Police Dept. of the N.Y. State Special Narcotics Prosecutor between 9:30 a.m. and 5:30 p.m. during the period from 9-17-77 through 10-14-77, and further order that David Harding shall be returned to the MCC no later than 5:30 p.m. on each of the above dates to continue his incarceration.....Duffy, J.				
9-16-77	Filed deft. Gerard Cachoian's reply affdvt. to opposition by Gov't for deft's motion to reduce sentence.				
9-20-77	Filed Gov't affdvt. in opposition to deft Ernest Malizia post trial motions				
9-20-77	Filed memo. denying deft. Ernest Malizia's motion for a new trial.....Cooper, J. m/n				
9-19-77	Application to released David Harding into the custody of N.Y. City Police Dept. is granted.....Cooper, J m/n				
9-26-77	Filed Notice of Appeal from the judgment entered.....9-19-77. (copies issued)(copies mailed)				
10-3-77	Filed Writ H/C Ad Testificandum for Roberto Rivera to testify -v- Ernest Malizia. Writ withdrawn on 4-28-77.....Cooper, J.				
10-3-77	Filed Writ of H/C. Ad Testificandum for Frank Torruella. Writ satisfied on 6-14-77.....Cooper, J.				

AD 288A

Interval
(per Section II)

Start Date
End Date

Ltr. Total
Code Days

AIC

DA: kn

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JOSEPH MAGNANO, a/k/a "Joe the Grind",
FRANK PALLATTA, a/k/a "Bolot", and a/k/a
"Nose",
RICHARD BOLELLA,
LOUIS MACCHIAROLA, a/k/a "Red Hot",
MICHAEL CARBONE,
DOMINIC TUFARO, a/k/a "Donnie Boy",
FRANK FERRARO, a/k/a "Skooch",
CARMINE MARGIASSO, a/k/a "Charlie",
ANTHONY DeLUTRO, a/k/a "Tony West",
ANTHONY SOLDANO, a/k/a "Tony",
JOSEPH MALIZIA, a/k/a "Patsy Pontiac",
ERNEST MALIZIA,
FRANK CARAVELLA,
JOHN GWYNN,
WILLIAM CHAPMAN, a/k/a "Chappy",
ST. JULIAN HARRISON,
FRANK LUCAS,
GERARD CACHOIAN, a/k/a "Coco",
ROBERTO RIVERA, and
GABRIEL RODRIGUEZ, a/k/a "Cass",
a/k/a "Cassanova",

Defendants.

INDICTMENT

S 75 Cr. 687

The Grand Jury charges:

From on or about the 1st day of January, 1973
and continuously thereafter up to and including the date
of the filing of this indictment, in the Southern District
of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK
PALLATTA a/k/a "Bolot", a/k/a "Nose", RICHARD BOLELLA,
LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC
TUFARO a/k/a "Donnie Boy", FRANK FERRARO a/k/a "Skooch",
CARMINE MARGIASSO a/k/a "Charlie", ANTHONY DeLUTRO a/k/a
"Tony West", ANTHONY SOLDANO a/k/a "Tony", JOSEPH MALIZIA
a/k/a "Patsy Pontiac", ERNEST MALIZIA, JOHN GWYNN, WILLIAM
CHAPMAN a/k/a "Chappy", ST. JULIAN HARRISON, FRANK LUCAS,
GERARD CACHOIAN a/k/a "Coco", ROBERTO RIVERA, and GABRIEL
RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova", the defendants,
and Frank Caravella, Alex Pulphus, Joseph Condella,
Jose Ramos, Mario Perna, and Anthony Verzino, named herein
as co-conspirators but not as defendants, and others to
the Grand Jury known and unknown, unlawfully, wilfully
and knowingly combined, conspired, confederated and

A:ko agree together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code

2. It was part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the conspiracy and to effect the objects thereof the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about February 1973 defendant ERNEST MALIZIA met co-conspirator Mario Perna at the Evergreen Bar at 4905 Fifth Ave., Brooklyn, New York and had a conversation.
2. In or about February 1973 defendants ERNEST MALIZIA and FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", met in the Bronx, New York and rode in an automobile.
3. In or about March 1973 defendant FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", met defendant ERNEST MALIZIA and co-conspirator Mario Perna at the Raceway Diner in Yonkers, New York and discussed narcotics.
4. In or about March 1973 defendant FRANK FERBARO a/k/a "Skooch" delivered a package containing approximately 2 kilograms of heroin to defendant ERNEST MALIZIA and co-conspirator Mario Perna on Allerton Avenue, Bronx, New York.
5. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately one-quarter kilogram of heroin to defendant JOHN GWYNN.
6. In or about March, 1973 defendant WILLIAM CHAPMAN a/k/a "Chappy" introduced co-conspirator Mario Perna and defendant ERNEST MALIZIA to defendant ST. JULIAN HARRISON

DA:ko

A

20

7. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna paid approximately \$20,000 to defendants DOMINIC TUFARO a/k/a "Donnie Boy", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", and FRANK FERRARO a/k/a "Skooch"

8. In or about March, 1973 co-conspirator Mario Perna and defendant ERNEST MALIZIA received a package containing approximately 4 kilograms of heroin from FRANK FERRARO a/k/a "Skooch".

9. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately 3 kilograms of heroin to defendant ST. JULIAN HARRISON.

10. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna paid defendants JOSEPH MAGNANO a/k/a "Joe the Grind", DOMINIC TUFARO a/k/a "Donnie Boy", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", and FRANK FERRARO a/k/a "Skooch" approximately \$20,000.

11. In or about April 1973 defendant FRANK LUCAS paid co-conspirator Mario Perna and defendant ERNEST MALIZIA approximately \$56,000.

12. In or about April, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately one-eighth kilogram of heroin to defendant GERARD CACHOLAN a/k/a "Coco".

13. In or about September, 1973 co-conspirators Mario Perna and Anthony Verzino and defendant ERNEST MALIZIA met and had a conversation.

14. In or about September, 1973 defendant GERARD CACHOLAN a/k/a "Coco" introduced defendant ROBERTO RIVERA to co-conspirator Mario Perna and defendant ERNEST MALIZIA.

15. In or about September, 1973 co-conspirator Mario Perna delivered a package containing approximately two kilograms of heroin to defendant ROBERTO RIVERA at the Pathmark Shopping Center near Bruckner Boulevard and White Plains Road, Bronx, New York.

16. In or about October, 1973 defendant RICHARD BOLELLA met co-conspirator Mario Perna and had a discussion about reducing the price being paid for the heroin.

A-18

DA:ko

- A 21
17. In or about November 1973 defendants FRANK FERRARO a/k/a "Skooch" and CARMINE MARGIASSO a/k/a "Charlie" delivered a package containing approximately 12 kilograms of heroin to co-conspirator Mario Perna at the Cross County Shopping Center, Yonkers, New York.
18. In or about November, 1973 defendant ANTHONY DeLUTRO a/k/a "Tony West" delivered a package containing approximately 5 kilograms of heroin to co-conspirator Anthony Verzino.
19. On or about December 1st, 1973 co-conspirator Mario Perna and defendant ERNEST MALIZIA delivered a package containing approximately 10 kilograms of heroin to defendant FRANK LUCAS at the Van Cortlandt Motel, Bronx, New York.
20. In or about November, 1973 co-conspirator Anthony Verzino paid defendant ANTHONY DeLUTRO a/k/a "Tony West" approximately \$250,000 in two installments.
21. In or about January 1974 defendant ANTHONY SOLDANO a/k/a "Tony", delivered a package containing approximately 3 kilograms of heroin to co-conspirator Anthony Verzino in Queens, New York.
22. On or about January 15, 1974, defendant JOHN GWYNN distributed approximately 148.5 grams of heroin in or near Apartment 5C, 1065 Jerome Avenue, Bronx, New York.
23. On or about February 25, 1974 co-conspirators Frank Caravella and Anthony Verzino possessed approximately 26 pounds of heroin at 1130 Pelham Parkway, Bronx, New York.
24. On or about January 28, 1975, the defendant FRANK LUCAS possessed approximately \$584,705 in cash at 933 Sheffield Road, Teaneck, New Jersey.

(Title 21 United States Code, Section 846.)

SECOND COUNT

The Grand Jury further charges:

In or about March 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", RICHARD BOLELLA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy", FRANK FERRARO a/k/a "Skooch", and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 2 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

THIRD COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", RICHARD BOLLELA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy" FRANK FERRARO a/k/a "Skooch" and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 4 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

FOURTH COUNT

The Grand Jury further charges:

In or about November, 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolat", a/k/a "Nose", RICHARD BOLELLA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy", FRANK FERRARO a/k/a "Skooch" and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 12 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), and Title 18, United States Code, Section 2.)

FIFTH COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, ST. JULIAN HARRISON and FRANK LUCAS the defendants, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

A

SIXTH COUNT

The Grand Jury further charges:

In or about October, 1973 in the Southern District of New York, FRANK LUCAS the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute Schedule I and II narcotic drug controlled substances, to wit, approximately 4 kilograms of heroin and 2 kilograms of cocaine.

(Title 21, United States Code, Sections 812
841(a)(1) and 841(b)(1)(A))

SEVENTH COUNT

The Grand Jury further charges:

On or about the 1st day of December, 1973 in the Southern District of New York, FRANK LUCAS the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 10 kilograms of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

EIGHTH COUNT

The Grand Jury further charges:

In or about November, 1973 in the Southern District of New York, ANTHONY DeLUTRO a/k/a "Tony West", the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 5 kilograms of heroin

(Title 21, United States Code, Sections 812
841(a)(1) and 841(b)(1)(A).)

NINTH COUNT

The Grand Jury further charges:

In or about January, 1974 in the Southern District of New York, defendants ANTHONY SOLDANO a/k/a "Tony", and JOSEPH MALIZIA a/k/a "Patsy Pontiac" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a) (1) and 841(b) (1) (A) Title 18, United States Code, Section 2.)

TENTH COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, JOHNNY GWYNN the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a) (1) and 841(b) (1) (A).)

ELEVENTH COUNT

The Grand Jury further charges:

In or about April, 1973 in the Southern District of New York, GERARD CACHOLAN a/k/a "Coco" the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-eighth kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a) (1) and 841(b) (1) (A).)

TWELFTH COUNT

The Grand Jury further charges:

In or about September, 1973 in the Southern District of New York, ROBERTO RIVERA the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

THIRTEENTH COUNT

The Grand Jury further charges:

In or about December 1973 in the Southern District of New York FRANK CARAVELLA the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FOURTEENTH COUNT

The Grand Jury further charges:

On or about October 30, 1973, in the Southern District of New York, the defendant, JOHN GWYNN, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, 159.5 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18 United States Code, Section 2.)

FIFTEENTH COUNT

A . 25

The Grand Jury further charges:

On or about the 20th day of December, 1973, in the Southern District of New York JOHN GWYNN, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, 151.5 grams of cocaine.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

SIXTEENTH COUNT

The Grand Jury further charges:

On or about the 15th day of January, 1974 in the Southern District of New York, JOHN GWYNN, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, 148.5 grams of heroin.

(Title 21, United States Code, Section 812 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

SEVENTEENTH COUNT

The Grand Jury further charges:

In or about March 1971, in the Southern District of New York, GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova", the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 1/8 kilogram of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A).)

A-25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1.

UNITED STATES OF AMERICA :
V. : Criminal No. S - 75 - 687
ERNEST MALIZIA : NOTICE OF MOTION
:

TO: OFFICE OF THE U.S. ATTORNEY
U.S. COURTHOUSE
FOLEY SQUARE N.Y. N.Y. 10007

SIR:

PLEASE TAKE NOTICE that on April 14, 1977, at 9:00 o'clock A.M. or as soon thereafter in the forenoon as I can be heard, defendant Ernest Malizia, by his own person will move before this court for the disqualification and/or recusal of the trial judge pursuant to 28 U.S.C. Sections 144 and 455.

A brief in support of this motion is enclosed. Also enclosed are an affidavit of the defendant in the above captioned matter. Further also it will be requested by the defendant acting in propria persona that his attorney of record be likewise be entirely dismissed from participating any further in my defense.

Ruford J. Lewis 4/14/77
Case of *Ernest Malizia*
JUL 14 1977
28 U.S.C. 144
Ernest Malizia
Metropolitan Correctional Center
150 Park Row
New York N.Y. 10007

Dated: April 12 1977

A-26

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2.

UNITED STATES OF AMERICA :

V. :

Criminal No. S - 75 - 687

ERNEST MALIZIA :

AFFIDAVIT

STATE OF NEW YORK :
COUNTY OF NEW YORK : SS:

Ernest Malizia, under his own oath, hereby deposes
and says:

1. I am the defendant in the above captioned matter.
2. On March 31, 1977, I was informed by my court appointed counsel, Joseph I. Stone, Esq., of the following conversation or "deal" that transpired in the Chambers of the Hon. Irving Ben Cooper, Chief U.S.D.J., Southern District of New York:
3. Counsel aforementioned, Stone, Esq., made me aware that in conversation with Judge Cooper the latter proposed to him, in order that such proposition were transmitted to me, that in case that I were interested and accepting his (the Judge's suggestion) he (the Judge) would give me the opportunity of having a sentence of twelve (12) years altogether in this instant case at bar consolidated with the escape case now being pending against me in this same jurisdiction and currently being handled by another attorney, Irving Cohen, Esq., and which case is also being ventilated at this very same Federal District, with the condition that in case I were accepting such plea bargaining coming directly from him (trial Judge Cooper) that it would be stipulated that such sentence was to be runned consecutively to an already imposed sentence of ten(10) years that actually I am serving. Witnesses to such telephone conversation were Messrs. Michael Gardner and Jerry Gerardi.

Subscribed by the Affiant
July 27, 1977, to the
oaths (18 U.S.C. 4304)
Dated: April 12, 1977

Ernest Malizia
Ernest Malizia
Metropolitan Correctional Center
150 Park Row
New York N.Y. 10007

Subscribed by the Affiant
July 27, 1977, to the
oaths (18 U.S.C. 4304)."

A-27

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3.

UNITED STATES OF AMERICA :

V. :

ERNEST MALIZIA :

Criminal No. S - 75 - 687

BRIEF OF DEFENDANT IN SUPPORT
OF MOTION FOR DISQUALIFICATION
OF THE TRIAL JUDGE AND DISMISSAL
OF THE ATTORNEY OF RECORD

FILED: *Richard J. Levine* #113/77
TITLE: *Case Malizia*
"AUTHORITY" : U.S. 288 of
July 27, 1977, to administer
oaths (18 U.S.C. 4004)." -

ERNEST MALIZIA
Defendant In Propria Persona
Metropolitan Correctional Center
150 Park Row
New York N.Y. 10007

Ernest Malizia

A-28

STATEMENT OF FACTS

4.

The facts in this case are brief, concise, and circumscribed themselves to a particular telephone conversation that took place on the March 31, 1977, between my court appointed counsel of record in this instant matter and myself and which telephone conversation was heard with my permission by Messrs. Michael Gardner and Jerry Gerardi at present inmates of the Metropolitan Correctional Center 150 Park Row New York N.Y. 10007.

ARGUMENT

To me, as a defendant in this instant matter, it seems highly unusual and questionable that the Hon. Judge Cooper, Chief Judge at this Federal District, to engage himself in practices that from its offset are tantamount to and tainted by bias and prejudice.

If in fact the conversation hereby alleged that took part between Judge Cooper and court appointed attorney Stone Esq., then that is going to be in plain view that Judge Cooper is going to be unable to act himself in this case as an impartial and just arbiter, which would call for his immediate recusal and/or disqualification to preside any further in this case, as well as for the court appointed counsel, Stone, Esq., to also disqualify himself from this case since he is the one that by representing me he had engaged himself on an unlawful plea bargaining which is entirely on my detriment since as an advocate he should know better than to allow, without protest made, a proceeding to continue whereby the Judger of facts implicitly, and before trial of the facts at hand, is finding me guilty when he adventured to offer to me such proposition through my court appointed attorney Stone, Esq.

As a substantiation to my allegations of the telephone conversation that took place between court appointed attorney Stone Esq., and myself on March 31, 1977, we have witnesses on the person (s)

5.

of Messrs. Michael Gardner and Jerry Gerardi, at present inmates at the Metropolitan Correctional Center, 150 Park Row, New York, N.Y. 10007.

Without margin for error it can be argued at this point in time that court appointed counsel, Stone, Esq., is grossly and inefficiently and inadequately representing me inasmuch of his steadfast refusal to subpoena witnesses in my behalf that most conclusively could establish my innocence in this indictment at hand thus as of his refusal to request from the prosecution to produce an entire true and accurate copy of or reproduction of certain tape or tapes in which allegedly I made some statements in regards to this case at bar.

Wherefore, for the reasons stated herein it is most energetically requested that the Judge presiding at this proceedings, Hon. Irving Ben Cooper, recuse and disqualify himself from any further intervention in connection with this matter at hand and that also court appointed counsel, Irving I. Stone, Esq., be dismissed by this court, in the best interest of justice, from participating any further in my defense.

WITNESSED BY: Richard J. Lowe 4/13/77
JULY 27, 1950, to administer
oaths, 18 U.S.C. 4004."

Ernest Valizia
Ernest Valizia
Defendant In Propria Persona
Metropolitan Correctional Center
150 Park Row
New York N.Y. 10007

Dated: April 13th 1977.

1 mchr

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 ----- x

5 UNITED STATES OF AMERICA, :

6 vs. :

7 ERNEST MALIZIA, :

8 Defendant. :

9 ----- x

10 Before:

11 HON. IRVING BEN COOPER,

12 District Judge
13 and a jury

14 New York, April 19, 1977
2:00 p.m.

15 APPEARANCES

16 ROBERT B. FISKE, JR., Esq.,
17 United States Attorney for the
Southern District of New York,
18 By: FEDERICO E. VIRELLA, JR., Esq.,
DIANA HELLER, Esq.,
19 Assistant United States Attorneys

20
21 JOSEPH I. STONE, Esq.,
Attorney for Defendant

22
23 - - -
24
25

A-31

(Jury panel present.)

THE CLERK: United States of America v.
Ernest Malizia.

Is the government ready?

MR. VIRELLA: The government is ready.

THE CLERK: Is the defendant ready?

MR. STONE: The defendant is ready,
your Honor, but I think it would be incumbent upon all
parties to have a conference in chambers before we pro-
ceed.

THE COURT: Will you keep your seats, ladies
and gentlemen? There is something counsel has to say
that I want to hear in chambers.

(In the robing room.)

MR STONE: Your Honor, about eight minutes ago
Mr. Malizia was brought into the courtroom. At that time
he handed me copies of a notice of motion for a writ of
habeas corpus ad testificandum. One copy of the notice
of motion I gave to Mr. Virella and I hand the Court one
copy of the notice of motion. I think in the interests
of seeing Mr. Malizia's wishes are placed on the record
it would be in the best interests that he be brought in
here.

These motions are to disqualify you and

A-32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcbr

3

to fire me.

THE COURT: I don't understand this. Who prepared this for him?

MR. STONE: I don't know, your Honor.

THE COURT: Did you convey to him the material that he recites as coming from me?

MR. STONE: Your Honor, Mr. Malizia called me and asked me to prepare certain papers and I told him it was not the exact issue and those were not the facts and I would not prepare them on the basis of what he suggested.

THE COURT: What do you propose I do?

I presume, Mr. Virella, that you have already read this. I'm just glancing at it and I get the impression that he is drawing upon a conversation that we had in answer to Mr. Stone's question when he said: Won't you say something as to what may very well come out of this by way of a sentence?

And then we said distinctly that we could not make any promises whatsoever.

MR. VIRELLA: That is correct.

THE COURT: Do you remember that, Mr. Stone?

MR. STONE: I remember that and I conveyed that, your Honor, to the defendant. I gave him my opinion.

A-33

1 mchr

4

2 He asked me, in turn, to convey to your
3 chambers that if you would emphatically state on the
4 record that you would give him no more than ten years
5 he would accept the plea.

6 Your chambers called me and said it would be
7 against the law to make any promises of any kind to the
8 defendant.

9 THE COURT: Thank you.

10 It is quite clear to me that the papers have
11 come to you and that you as the lawyer felt it proper to
12 call it to the attention of the Court and the Assistant
13 United States Attorney.

14 Your next suggestion is that Mr. Malizia
15 be brought in here right now and that is also valid, so may
16 I ask you to be good enough to have the marshal bring the
17 defendant in, Mr. Clerk.

18 (Defendant present in the robing room.)

19 THE COURT: Did you prepare these papers?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Where did you prepare them?

22 THE DEFENDANT: In MCC.

23 THE COURT: What do you want to say in support
24 of them? Your lawyer said you wanted to be heard orally
25 in support of them. What do you wish to say?

A-34

1 mcbr

5

2 THE DEFENDANT: I want to submit the papers.

3 THE COURT: What else do you want to say?

4 THE DEFENDANT: That is all.

5 THE COURT: Does the government wish to say
6 anything?

7 MR. VIRELLA: We would oppose this motion.
8 Though we are taken by surprise by the late hour at which
9 this motion is served, and the fact that Mr. Malizia's
10 motion is not reported utilizing the standard legal pro-
11 cedure that is set out by the statute that he has to make
12 certain allegations of facts concerning any particular
13 affidavit that he has filed, based on a quick reading of
14 this he has not set forth anything that is fact. It is
15 simply just an allegation based on conclusory terms and
16 that would not be sufficient to support this particular
17 motion.

18 THE COURT: As you read the affidavit of
19 Malizia verified the 12th day of April, 1977, do you find
20 that the substantial allegations there are true or false?

21 MR. VIRELLA: Absolutely false, your Honor.

22 THE COURT: I brand them as unmitigated
23 falsehoods. The motion is denied.

24 THE DEFENDANT: I would like to appeal
25 that.

A-35

THE COURT: You will do whatever you wish.
The paper will be marked as an exhibit and be made a
part of the trial record.

Thank you, marshal.

(The defendant left the robing room.)

MR. STONE: Your Honor, I make an application
to start trial at 11 o'clock on Wednesday, Thursday and
Friday for the following reasons:

I have just received notice that I have
an arraignment tomorrow in Queens and I can't get any other
lawyer to handle the matter.

THE COURT: Is the defendant incarcerated?

MR. STONE: No, he is not, but I can't reach
him and he has notice also. If I could have one of your
law clerks call the Court, I'm sure I'll be here by
10:30 or a quarter to 11.

THE COURT: Your application is granted, but
you must be sure to remind my office so that they inform
the Judge out in Queens.

MR. STONE: On Thursday, your Honor, I have
a homicide sentence. I must at least go and advise the
Judge to find out whether he wants to adjourn. There
is co-counsel and a lot of security involved. I will
contact them immediately. That is Judge Scott in

A-36

of America vs.

United States District Court for

DEFENDANT

ERNEST MALIZIA

EASTERN DISTRICT OF NEW YORK

DOCKET NO.

75 Cr. 687 (IEC)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
6	15	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

J. Jeffrey Weisenfeld, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE

☐ NOT GUILTY

There being a ~~guilty~~ verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with others to violate Sections 812, 841(a)(1) (A) of Title 21, U.S. Code. Unlawfully, wilfully and knowingly would distribute and possess with intent to distribute schedule I and II, narcotic drug controlled substances in violation of Sections 812, 841(a)(1) (A) of Title 21, United States Code.

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **FIFTEEN (15) YEARS** on count 1, this sentence is to run consecutively with sentences of Judge Motley, Judge Walker and Judge Pollack and any other sentence imposed upon this defendant anywhere prior to this date.

The defendant is **FINED \$25,000.00** or stand committed.

The defendant is placed on **SPECIAL PAROLE of SIX (6) YEARS**, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement.

SPECIAL
CONDITIONS
OF
PROBATION

Defendant advised of his right to appeal.

A37

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period, but within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

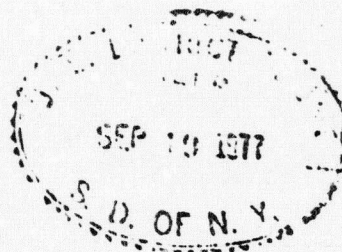
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

ERNEST MALIZIA,

Defendant.



S 75 Cr. 687

MEMORANDUM

(IBC)

IRVING BEN COOPER, D. J.

Defendant Malizia has moved pursuant to Rule 33 of the Federal Rules of Criminal Procedure for an order vacating and setting aside the judgment entered against him and granting a new trial. For the reasons set forth below, the motion is denied in its entirety.

Following a jury trial of eleven days, defendant was found guilty of conspiring to distribute narcotic drug controlled substances in violation of Title 21, U.S.C. §§ 812, 841(a)(1) and 841(b)(1)(A). On June 15, 1977, we sentenced Malizia to 15 years imprisonment to run consecutively with any other sentences imposed upon him anywhere prior to that date,¹ and in addition a \$25,000 committed fine; we included special parole of six (6) years.

1. Malizia had previously been sentenced by Judge Motley in March, 1974 to ten years upon a conviction for possession and distribution of cocaine. Further, he was on May 24, 1977 sentenced to five years (consecutively) by Judge Werker upon a guilty plea for escape from federal detention.

A-38

The proof at trial revealed defendant to be an active member of an involved heroin distribution network in the New York metropolitan area during 1973-74. He was a middle-man in this massive conspiracy to distribute heroin in return for hundreds of thousands of dollars in cash. As we stated at the time sentence was imposed:

We have presided over trials involving the sale of substantial quantities of narcotics. Never, however, on a scale as extraordinary as this with its enormous quantities of heroin bought and sold on an almost daily basis. The activities of this group emphasize the overlords and regimental tiers of operation, all governed by tight maneuvers and bold enough to successfully avoid governmental detection of which they were constantly apprehensive and aware. Nor have the important operational details of their cruel enterprise come to light even at this late date.

Let's face it. So inhuman, ruthless and cold blooded was their approach to the execution of their nefarious schemes that we sat aghast at the unfolding of the enormity of their horrifying indifference to life's values.

The holocaust of misery, the dreadful terminus of life for legions following the vast narcotic operations revealed herein too horrifying even to contemplate. USA v. Malizia, sentencing minutes at pp. 46-47, June 15, 1977

Defendant's instant motion is premised on two grounds: selective prosecution and denial of his right of self-representation. As readily appears, both grounds are without merit.

In United States v. Berrios, 525 F.2d 1207, 1211 (2d Cir. 1974), our Circuit had occasion to examine the issue of selective or discriminatory prosecution:

To support a defense of selective or discriminatory prosecution, a defendant bears the heavy burden of establishing, at least prima facie, (1) that, while others similarly situated have not generally been proceeded against because of conduct of the type forming the basis of the charge against him, he has been singled out for prosecution, and (2) that the government's discriminatory selection of him for prosecution has been invidious or in bad faith, i.e., based upon such impermissible considerations as race, religion, or the desire to prevent his exercise of constitutional rights.

Defense counsel asserts that "defendant has been a victim of selective and discriminatory prosecution by the United States Attorney for the Southern District of New York." [Affidavit of J. Jeffrey Weisenfeld, Esq., sworn to June 17, 1977, par. 5] He further states that "there is a policy of the United States Attorney or the Department of Justice not to prosecute an individual on charges where there has been a prior disposition in a state court or other jurisdiction concerning the same facts or circumstances." [Affid. , par. 7] Accordingly, counsel reasons that from the fact that defendant pleaded guilty to state narcotics charges "involving acts that were a part of the conspiracy ... herein" [par. 5], he is a victim of selective or discriminatory prosecution. This argument is without merit.

In the first place, we are informed that it is not the policy of either the United States Attorney for the Southern District of New York or of the Department of Justice to dispense with prosecution upon a disposition against a defendant in state court on similar charges. [Affidavit of Assistant U.S. Attorney Federico E. Virolla, Jr., sworn to August 8, 1977, pars. 3, 5, 6] The actual and correct policy statement is that:

No Federal case should be tried when there has been a state prosecution for substantially the same act or acts without a recommendation having been made to the Assistant Attorney General demonstrating compelling Federal interests for prosecution. No such recommendation may be approved by the Assistant Attorney General without having it first brought to the attention of the Attorney General.... Note that approval of the action of the United States Attorney subsequent to the dual prosecution constitutes compliance. [United States Attorney Manual, 9-2.142 (January 10, 1977)]

The facts of the present case indicate that the Government did indeed conform with the above-stated policy: Approval for the prosecution of this defendant was sought on June 24, 1977 and the Attorney General and Assistant Attorney General approved the request on August 8, 1977. [Virolla affid., par. 5] Therefore, defendant has failed to satisfy the first requirement of the Berrios two-prong test, for no discrimination or selective prosecution has been established.

Furthermore, defendant has offered no evidence that his prosecution was based upon impermissible considerations, i.e., race, religion or the desire to prevent the exercise of constitutional rights. See United States v. Oaks, 527 F.2d 937 (9th Cir. 1975); United States v. Alimad, 347 F.Supp. 912 (M.D. Pa. 1972), aff'd sub. nom., United States v. Berrigan, 482 F.2d 171 (3d Cir. 1973). Such an impermissible consideration by the Government is an essential element of a prima facie case of selective or discriminatory prosecution. Mere "conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation." Oyler v. Boles, 368 U.S. 448, 456 (1962); United States v. Berrios, supra.

We find that the Government decision to prosecute Malizia after his guilty plea in state court was not arbitrary or unconstitutional. Over and over again the evidence at trial showed that defendant was a dealer in massive amounts of heroin. His operations were extensive and of long duration, involving a well-established network of suppliers, middlemen and street dealers. Defendant's disrespect for the law, the misery his machinations inflicted upon the public, and his attempts to evade prosecution were all flagrant.²

2. Two particular instances bear mention here. First, Malizia escaped from federal custody in September 1974 in a successful plan which included the bribing of a priest and a prison guard. Malizia pled guilty before Judge Werker of this Court (74 Cr. 1018) and was sentenced

Defendant's next argument to set aside the judgment and for a new trial is based upon the Court's denial of his motion during trial to conduct his own defense. As readily appears this motion is entirely without merit and is denied.

Title 28 U.S.C. § 1654 provides:

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

It is well established that the right of a defendant in a criminal case to represent himself is unqualified if invoked prior to the commencement of trial. United States ex rel. Maldonado v. Denno, 348 F.2d 12, 15 (2d Cir. 1965); see also, United States v. Plattner, 330 F.2d 271, 273 (2d Cir. 1964); United States v. Bentvena, 319 F.2d 916, 938 (2d Cir.), cert. denied, Ormento v. United States, 375 U.S. 940 (1963).

Footnote 2 cont'd

to five years to run consecutively with the ten year sentence previously imposed by Judge Motley. Second, Malizia was found guilty after a trial to the Court (Pollack, J.) (77 Cr. 402) on a charge of assault on a federal reservation: on May 2, 1977 he had viciously attacked his lawyer during his trial before us.

In the present case, however, the request by Malizia to represent himself occurred after the trial had commenced; indeed, defendant moved on the fourth day of trial. [Tr.³ 51b] Accordingly, the appropriate rule on the question of a criminal defendant's right of self-representation upon motion made after the commencement of trial is that enunciated in United States ex rel. Maldonado v. Denno, supra (at 15):

Once the trial has begun with the defendant represented by counsel... his right thereafter to discharge his lawyer, and to represent himself is sharply curtailed. There must be a showing that the prejudice to the legitimate interests of the defendant overbalances the potential disruption of proceedings already in progress, with considerable weight being given to the trial judge's assessment of this balance. (emphasis added)

Defendant argues that "the choice of representation is for the defendant personally." [Weisenfeld affid., ¶15] Faretta v. California, 422 U.S. 806 (1975). On the facts presented herein, defendant's reliance upon Faretta v. California, supra, is misplaced. As the Second Circuit noted recently: "The recent Supreme Court decision, Faretta v. California, ... casts no pall on our Maldonado ruling. Faretta does not involve motions made after the commencement of trial...." Sapienza v. Vincent, 534 F.2d 1007, 1010 (2d Cir. 1976)(emphasis added). Thus, Faretta v. California, which expresses a defendant's absolute right of self-representation on motion made prior to trial is inapposite here.

3. "Tr." followed by a number indicates a citation to the official trial transcript.

Confronted with defendant's mid-trial request to represent himself (Tr. 512), we were duty bound, and did, conduct an extensive hearing to determine whether "the prejudice to the legitimate interests of the defendant overbalances the potential disruption of proceedings already in progress...." United States ex rel. Maldonado v. Denno, supra at 15. Defendant contends that the hearing "was insufficient and the decision improper as a matter of law." [Weisenfeld affid., ¶15] We disagree.

After conducting a full and complete hearing into defendant's background, education and employment experience (Tr. 546-47), we found that defendant was ignorant, offensive in manner and deportment and incapable of pursuing his own defense without severely prejudicing himself; that defendant's conduct throughout the trial was deliberately disruptive; that the attempt to dismiss his counsel was merely a tactic to manipulate the record for purposes of appeal; that counsel was an able, resourceful and determined representative of defendant. [Tr. 553-57]

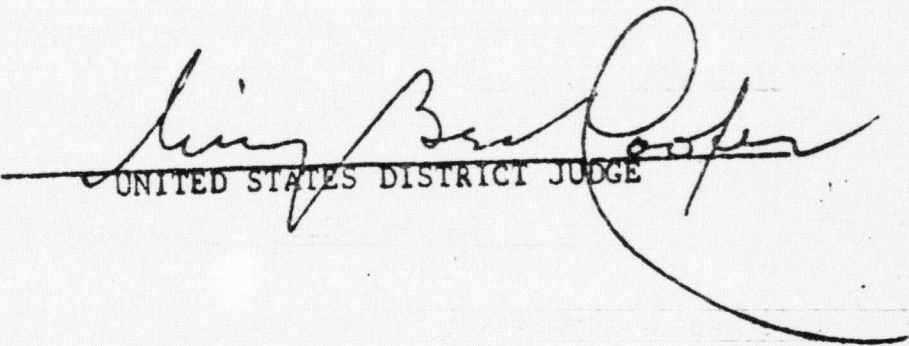
We find that the hearing on defendant's mid-trial motion to represent himself was complete and adequate to protect his constitutional rights, and in conformity with prior decisions of this Circuit. See United States ex rel. Maldonado v. Denno, supra. There is sufficient basis in the trial record

to establish that the prejudice to defendant's interests which would have occurred if he were allowed to represent himself outweighed his qualified right so to do. Id. The denial of defendant's mid-trial motion to represent himself was a proper exercise of judicial discretion which we will not disturb.

Defendant's motion is denied in its entirety.

SO ORDERED:

New York, N.Y.
September 19, 1977


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Docket Number 75 Cr. 687

Irving Ben Cooper

(District Court Judge)

ERNEST MALIZIA

NOTICE OF APPEAL

Notice is hereby given that ERNEST MALIZIA appeals to
the United States Court of Appeals for the Second Circuit from the ☐ Judgment ☐ order ☐ other
(specify) Judgment of conviction (cont.) entered in this action on September 19, 1977
(Date)

Date Sept. 26, 1977

To: U.S. Attorney
S.D.N.Y.

Address

J. Jeffrey Weisenfeld
(Counsel for Appellant)
J. JEFFREY WEISENFELD, ESQ.
401 Broadway
New York, New York 10013

Phone Number 212/925-8640

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

► QUESTIONNAIRE

► TRANSCRIPT ORDER

► DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

☐ I am ordering a transcript

☒ I am not ordering a transcript

Reason:

☒ Daily copy is available

☐ U.S. Attorney has placed order

☐ Other. Attach explanation

Prepare transcript of

☐ Pre-trial proceedings

☐ Trial

☐ Sentence

☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ► Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

Sept. 26, 1977

► COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

ORIGINAL

A-47

entered on June 15, 1977 and the order denying his
motion for a new trial.

WEISENFELD

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 10 day of Nov. ,1977 at No. 1 St. Andrews Pl., NYC

deponent served the within *Appendix*
upon U.S. Atty. So. District of NY

the Appellee herein, by delivering /true
copy(ies) thereof to him personally. Deponent knew the person so
served to be the person mentioned and described in said papers as the
Appellee therein.

Sworn to before me this
10 day of Nov. 1977.

Edward Bailey

Edward Bailey

William Bailey
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978

ROBERT B. FISKE JR.

COPY RECEIVED

NOV 10 1977

U.S. ATTORNEY
SOUTHERN DIST. OF N.Y.